

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CENTURY 21 REAL ESTATE CORPORATION)

Plaintiff,)

v.)

C.A. 04-10785 DPW

DENNEHY, BARNES, VENTURES, INC.,)
JOHN S. DENNEHY AND THOMAS BARNES)

AFFIDAVIT OF THOMAS BARNES IN OPPOSITION TO
PLAINTIFF CENTURY 21 REAL ESTATE CORPORATION'S
MOTION FOR A PRELIMINARY INJUNCTION

I, Thomas Barnes, hereby depose and say:

1. I am the Principal and owner of Fidelity Group, Incorporated ("Fidelity Group").

I have personal knowledge of the facts stated herein.

2. Fidelity Group is a corporation that was organized in 1990 under the laws of the Commonwealth of Massachusetts.

3. Dennehy/Barnes Ventures, Inc. ("Dennehy/Barnes") is a Massachusetts corporation that was organized in 1996 by John S. Dennehy, Jr. and myself. Pursuant to a Franchise Agreement dated February 1, 1996 between Dennehy/Barnes and Century 21 Real Estate Corporation ("Century 21"), Dennehy/Barnes began operating a real estate sales and leasing franchise under the name Century 21 Sentinel. Dennehy/Barnes ceased operating Century 21 Sentinel in 2000.

4. In 1998, Dennehy/Barnes purchased Fidelity Group. Shortly thereafter, by Franchise Agreement dated November 19, 1998 between Dennehy/Barnes, as owner of Fidelity

Group, and Century 21, Fidelity Group became a Century 21 franchisee. Fidelity Group operated a real estate sales and leasing franchise under the name Century 21 Fidelity.

5. Century 21 purportedly terminated the Sentinel and Fidelity Franchise Agreements in December 2000. On October 29, 2001, Century 21 filed a Complaint in Boston Municipal Court seeking to recover money allegedly due and owing under the Franchise Agreements (the "Century 21 Litigation").

6. In April 2002, I purchased Mr. Dennehy's interest in Dennehy/Barnes, and am now the sole owner of Fidelity Group. Dennehy/Barnes is an inactive corporation.

7. By Settlement Agreement dated December 17, 2002, Dennehy/Barnes, Thomas J. Barnes d/b/a Sentinel and Century 21 Fidelity, John S. Dennehy, Jr. d/b/a Century 21 Sentinel and Century 21 Fidelity, Fidelity Group, Inc., and Century 21 resolved the Century 21 Litigation and any claims related to the Franchise Agreements. To that end, in connection with that Settlement Agreement, Century 21 agreed to release, among others, Dennehy/Barnes, Thomas J. Barnes d/b/a Sentinel and Century 21 Fidelity, John S. Dennehy Jr. d/b/a Century 21 Sentinel and Century 21 Fidelity, Fidelity Group, Inc. from the debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages and any and all claims, demands, and liabilities as of the date of the release, including but not limited to the causes of actions arising out of the balance due under the Franchise Agreements.

8. Currently, Fidelity Group does business under the name Fidelity Group Real Estate Services. I have, on numerous occasions, contacted Multiple Listing Services ("MLS") to inform them that Fidelity Group is no longer affiliated with Century 21 and to request that any reference to Century 21 be removed from Fidelity Group's listings. I have been assured that Fidelity Group's listing bear no reference to Century 21. I understand, however, that it is not

feasible to guarantee that all old listings are purged from the internet. I have been assured that there will be no future listings for Century 21 Fidelity Group.

9. Fidelity Group has removed the name "Century 21" from its sign. (Attached hereto as Tab A are true and accurate copies of pictures depicting that the name Century 21 has been removed from Fidelity Group's sign and building). Fidelity Group has removed all references to Century 21 from its marketing, promotion, and brokerage materials. Fidelity Group is not marketing, promoting, or offering real estate brokerage services at its offices at 477 Harvard Street, Brookline, Massachusetts, or at any other location, under the name of Century 21 Fidelity Group. Fidelity Group is not using any print or telecommunication advertisements, Multiple Listing Service listings, drafts, labels, signs, flyers, billboards, stationery, envelopes, applications, booklets, brochures, catalogues, manuals, clothing, circulars, pamphlets, periodicals, bulletins, instructions, minutes, other communications, purchase orders, contracts, agreements, options to purchase, deeds, memoranda of agreements, assignments, licenses, books of account, orders, accounts, working papers, and plans that employ or relate, in any manner, to Century 21's trade names, service marks and trademarks.

10. Fidelity Group will not, in the future, reference Century 21 in its marketing, promotion, and brokerage materials. Fidelity Group will not market, promote, or offer real estate brokerage services at its offices at 477 Harvard Street, Brookline, Massachusetts, or at any other location, under the name of Century 21 Fidelity Group. Fidelity Group will not use any print or telecommunication advertisements, Multiple Listing Service listings, drafts, labels, signs, flyers, billboards, stationery, envelopes, applications, booklets, brochures, catalogues, manuals, clothing, circulars, pamphlets, periodicals, bulletins, instructions, minutes, other communications, purchase orders, contracts, agreements, options to purchase, deeds, memoranda

of agreements, assignments, licenses, books of account, orders, accounts, working papers, and plans that employ or relate, in any manner, to Century 21's trade names, service marks and trademarks.

Signed under the pains and penalties of perjury this 28th day of May, 2004.



Thomas J. Barnes